APPENDIX

In the

United States Circuit Court of Appeals

Fifth Circuit

No. 10122

REPUBLIC INSURANCE COMPANY,

Appelant,

versus

U. R. BUTTS, DEBTOR,

Appellee.

Appeal from the District Court of the United States for the Eastern District of Texas.

(December 5, 1942.)

Before SIBLEY, HUTCHESON, and HOLMES, Circuit Judges.

SIBLEY, Circuit Judge: U. R. Butts, as farmer-debtor sought relief under Section 25 of the Bankruptcy Act. Conciliation failed, and he was adjudicated a bankrupt under Subsection (S). His land had been bought by deed

from Republic Insurance Company on credit, with reserved vendor's lien, and the Company moved to strike the land from the schedule of assets because of its reserved superior title under Texas law. It also moved an immediate sale of the land for the purchase money debt. The motions were overruled and the proceedings taken to value the land and fix its rental. On review before the district judge the Company waived any question as to whether there was hope of rehabilitation, or whether the rental was adequate, and sought a judgment on the sole grounds that by reason of its superior title the bankruptcy court could not administer the land; or if it could, the land as of right must be sold on its demand, without such proceedings as are provided in Subsection (S). Both contentions were denied after careful consideration, and this appeal was taken.

Property in no sense that of the bankrupt cannot of course be seized by the bankruptcy court. But Bankruptcy Act Sec. 75(n) in naming the property of the farmer-debtor that the court is to exercise exclusive jurisdiction over includes among his real and personal property "any equity or right in such property . . . contracts for purchase, contracts for deed, or conditional sales contracts . . . or where a deed of trust has been given as security", showing clearly that any interest of the debtor in land purchased by him, though he have no title because it has been reserved or conveyed away as security, is to be protected and administered. And, we think, so long as

there exists a relation of debtor and creditor respecting the purchase of land, the power of bankruptcy may reach and regulate that relation. The security of course may not be taken and destroyed by bankruptcy, but it can be administered.

The "superior title" is an invention of Texas law to prevent a purchaser of land owing for it under a vendor's lien from keeping the land without paying for it. As between vendor and purchaser the title is regarded as in the vendor till the purchase money is paid, and the vendor may rescind, or retake possession or foreclosure after default; but these superior rights are all for security of the purchase money alone. In the early case of *Stephens vs. Motl.*, 18 S. W. 99, the Supreme Court said: "Notwithstanding the reservation of the vendor's lien in the deed, Motl (the purchaser) had the right to the possession of the land under his contract of purchase, and the title was vested in him, subjected only to be defeated by rescission for failure to pay the purchase money, and it might become perfect on payment of the notes. . . . Although he held the superior title as between himself and his vendee, Rucker (the vendor) stood in the relation of mortgagee of the land out of possession, and not entitled to possession until default on part of the vendee, and a rescission by him of the contract, or a foreclosure." So in the late case of *Gray vs. Kolinski*, 45 S. W. (2) 157, we read: "It is now the settled law of this State that while a deed with a vendor's lien reserved to secure purchase money is an

executory contract between the vendor and vendee and those in privity with them, it is so only in the sense that the naked legal title remains in the vendor, to be automatically vested in the vendee upon the payment of the purchase money; in all other respects between such parties, and in all respects in so far as strangers to the transaction are concerned, the deed is not executory, but is an executed contract." And still later in *Gates vs. Darby*, 131 S. W. (2) 95, it is said: "This court has uniformly held that the title of the vendor who reserves in his deed a lien for the purchase money is superior in the sense that the vendee cannot assert his title against the vendor unless he has paid the purchase money, that the vendor's title is limited to the character of security for the purchase money debt, and that when the debt has been paid the title to the vendor ceases and that of the vendee becomes absolute as to the vendor without any action on his part." This debtor therefore stands much as one who has conveyed title by common law mortgage to be defeated on payment of the debt, or by trust deed to secure the debt, or who bought under bond for title, title to be executed on payment. In any such case he has, until deprived by a complete rescission or foreclosure, such an interest as falls within the bankruptcy power and under the administration of this statute. Compare *Wright vs. Union Central Life Ins. Co.*, 304 U. S. 502; *Catahoula Bank vs. Kirby*, 112 Fed. (2) 124.

It follows that the land ought not to have been stricken from the schedule of assets. It likewise follows that it may be dealt with under Subsection (S) as other incumbered land is, the holder of the incumbrance not being entitled as of right to an immediate sale to pay his debt. *John Hancock Mutual Life Ins. Co. vs. Bartels*, 308 U. S. 180. But if hereafter the bankrupt fails to comply with the orders of the court, or is unable to refinance himself within three years, there is provision in the statute for a sale to be ordered. The present judgment does not cut off that remedy hereafter.

JUDGMENT AFFIRMED.

Revised Civil Statutes of Texas, 1925, Title 124, Trespass to Try Title.

Article 7364. Method of trying titles.

"All fictitious proceedings in the action of ejectments are abolished. The method of trying titles to lands, tenements or other real property shall be by action of trespass to try title. Act Feb. 5, 1840; G. L. vol. 2, p. 310."

Article 7366. Requisites of petition.

"The petition shall state:

1. The real names of the plaintiff and defendant and their residence, if known.

2. It shall describe the premises by metes and bounds, or with sufficient certainty to identify the same, so that

from such description possession thereof may be delivered, and state the county or counties in which the same are situated.

3. The interest which the plaintiff claims in the premises, whether it be a fee simple or other estate; and, if he claims an undivided interest, he shall state the same and the amount thereof.

4. That he was in possession of the premises or entitled to such possession.

5. That the defendant afterward unlawfully entered upon and dispossessed him of such premises, stating the date, and withholds from him the possession thereof.

6. If rents and profits or damages are claimed, such facts as show the plaintiff to be entitled thereto and the amount thereof.

7. It shall conclude with a prayer for the relief sought.

Article 7370. The possessor shall be defendant.

"The defendant in the action shall be the person in possession if the premises are occupied, or some person claiming title thereto in case they are unoccupied."